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CLERK OF THE
DISTRICT COURT
MARY HALPIN

2021 MAR 31 A 9:33

FILED

DEPUTY

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**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

MITCHELL D. KISHINEFF and DEBRA L.
KISHINEFF, husband and wife and the
marital community composed thereof,

Plaintiffs,
vs.

THURMAN L. MCCLENDON; S&H
TRUCKING, INC., a foreign corporation;
and DOES 1-10,

Defendants.

Cause No. DV 21-0375

Judge: Hon. Colette B. Davies

**PLAINTIFFS' COMPLAINT AND
DEMAND FOR JURY TRIAL**

COME NOW the Plaintiffs, Mitchell D. Kishineff and Debra L. Kishineff, and for
their Complaint against Defendants, allege as follows:

1. Plaintiffs are, and were at all times relevant hereto, husband and wife and
residents of Delta, British Columbia, Canada.

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2. Upon information and belief, Plaintiffs allege that Defendant Thurman L. McClendon is, and was at all times relevant hereto, a resident of the State of Tennessee.

3. Upon information and belief, Plaintiffs allege that Defendant S&H Trucking, Inc. is a legal entity organized under the laws of a State other than Montana, and has its principal place of business located in the State of Georgia.

4. On or about April 3, 2018, Plaintiff Mitchell D. Kishineff was the driver and Plaintiff Debra L. Kishineff was a passenger of a tractor-trailer which was proceeding in an eastbound direction on Interstate 90 near Billings, Yellowstone County, Montana. The roadway was icy and only the left passing lane had been sanded, so Plaintiff Mitchell D. Kishineff drove cautiously in the left passing lane. In his passenger side mirror, Plaintiff Mitchell D. Kishineff observed a tractor-trailer in the distance, traveling at a higher rate of speed in the right driving lane. In order to allow the approaching tractor-trailer to overtake him in the passing lane, Plaintiff Mitchell D. Kishineff activated his turn signal and changed lanes into the right driving lane. After Plaintiff Mitchell D. Kishineff safely executed his lane change and proceeded to travel eastbound in the right driving lane for a reasonable period of time, Defendant Thurman L. McClendon negligently drove a tractor-trailer into the back of Plaintiffs' tractor-trailer, causing a collision.

5. Upon information and belief, Defendant Thurman L. McClendon was an employee of Defendant S&H Trucking, Inc. at the time of the collision.

6. Defendant Thurman L. McClendon was acting within the course and scope of his employment with Defendant S&H Trucking, Inc. at the time of the collision.

7. Defendant Thurman L. McClendon was the sole cause of the collision.

8. Defendant Thurman L. McClendon was negligent and negligent as a matter of law.

9. Defendant S&H Trucking, Inc. is vicariously liable for the negligence of its employees in the course and scope of their employment, pursuant to the doctrine of *respondeat superior*.

10. Plaintiffs were injured as a result of the collision and Defendants' negligence.

11. Plaintiffs suffered property damage as a result of the collision and Defendants' negligence.

12. Plaintiffs have incurred special and general damages as a result of the collision and Defendants' negligence.

13. Plaintiffs were not a cause of the collision or their injuries and damages.

14. Defendants Does 1-10 are other persons or entities not yet identified who are or may be liable for Plaintiffs' injuries and damages. In particular, and without limitation, Does 1-10 include Defendant Thurman L. McClendon's employer at the time of the collision, if his employer was a person or entity other than Defendant S&H Trucking, Inc. When Plaintiffs have more information on Does 1-10, a motion to add parties will be made.

WHEREFORE, PLAINTIFFS PRAY:

1. For an award for all of their special and general damages caused by the collision and Defendants' negligence, which include but are not necessarily limited to, medical expenses, physical and emotional pain and suffering, loss of established course of life, loss of enjoyment of life, lost earnings and lost earning capacity, and damage to and loss of use of property.

2. For costs and fees as allowed by law; and,

3. For all other relief the Court deems appropriate.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues in this action so triable.

DATED this 30 day of March, 2021.

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ORIGINAL

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

<p>MITCHELL D. KISHINEFF and DEBRA L. KISHINEFF, husband and wife and the marital community composed thereof,</p> <p>Plaintiffs, vs.</p> <p>THURMAN L. MCCLENDON; S&H TRUCKING, INC., a foreign corporation; and DOES 1-10,</p> <p>Defendants.</p>	<p>Cause No. DV 21-0375 Judge: Hon. Colette B. Davies</p> <p>SUMMONS TO THURMAN L. MCCLENDON</p>
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TO: THURMAN L. MCCLENDON:

A lawsuit has been filed against you.

Within 21 days after service of this summons on you, you must serve the plaintiff an answer to the attached Complaint or a motion under Rule 12 of the Montana Rules of Civil Procedure. Do not include the day you were served in your calculation of time. The answer or motion must be served on the plaintiff or plaintiff's attorney, if plaintiff is represented by an attorney, whose name and address are listed on the Complaint.

If you fail to respond, judgement by default will be entered against you for the relief demanded in the complaint.

You also must file your answer or motion with the court.

DATED this 7th day of April, 2021.

CLERK OF DISTRICT COURT

By: Elise Peck

ORIGINAL

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

<p>MITCHELL D. KISHINEFF and DEBRA L. KISHINEFF, husband and wife and the marital community composed thereof,</p> <p>Plaintiffs, vs.</p> <p>THURMAN L. MCCLENDON; S&H TRUCKING, INC., a foreign corporation; and DOES 1-10,</p> <p>Defendants.</p>	<p>Cause No. DV 21-0375</p> <p>Judge: Hon. Colette B. Davies</p> <p>SUMMONS TO S&H TRUCKING, INC.</p>
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TO: S&H TRUCKING, INC.:

A lawsuit has been filed against you.

Within 21 days after service of this summons on you, you must serve the plaintiff an answer to the attached Complaint or a motion under Rule 12 of the Montana Rules of Civil Procedure. Do not include the day you were served in your calculation of time. The answer or motion must be served on the plaintiff or plaintiff's attorney, if plaintiff is represented by an attorney, whose name and address are listed on the Complaint.

If you fail to respond, judgement by default will be entered against you for the relief demanded in the complaint.

You also must file your answer or motion with the court.

DATED this 7th day of April, 2021.

CLERK OF DISTRICT COURT

By: E. Mae Peck